IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8178 OF 2005

The Abhyudaya Co-op.
Bank Ltd., . .. Petitioner.

vs.

State of Maharashtra
& Others. .. Respondents.

Mr. V.C. Ghosalkar for petitioner.
Mr. Jayesh Patel for respondent no.3.

CORAM : S.U. KAMDAR, J.
DATE : 12th December, 2005.

P.C.:

. By the present petition the petitioners is challenging the order dated 22.11.2004 passed in Appeal No. 245 of 2003. It is the case of the Bank that the loan was sanctioned on 2.2.89 to the principal borrower being a over draft facility and the respondent gave the guarantee on 2.2.89 towards the said loan facility. The money was also disbursed on 2.2.89 though on 11.8.89 the guarantors have revoked their guarantee and have contended that they are not continuing the said guarantee. As on

the date of revocation of guarantee, admittedly there is an outstanding amount of Rs. 6,00,085.39 due and payable by the principal borrower to the Bank. However, the learned Judge in the impugned order has taken into consideration the transactions which had taken place after 11.8.1989 so far as the payment received from the borrower but excluded further advances made by the Bank and found nothing due and payable and thus discharged the guarantee in its entirety by holding that nothing was due and payable by the guarantors. The order passed by the authority below is totally perverse and without any basis. As the authority below was required to consider the case of the guarantors as on 11.8.1989 when the guarantee was discharged. The liability, if any, stood crystalised as against the guarantors and, therefore, the guarantors cannot escape the said liability. However, while setting aside the impugned order dated 22.11.2004 I remand the matter back to the Co-operative appellate Court, Bombay for redetermination of the liability of the guarantor in light of the fact that the guarantee is discharged on 11.8.1989 and on redetermination of the said liability as on 11.8.1989 appropriate orders may be passed by the appellate Court. Petition disposed of accordingly. No order as to costs.